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as amended provides ample opportunity to respond to changes in program need while still maintaining a fairly organized process so that this adjustment does not become just another source of uncontrollable expenditure.

Mr. Moore also complains about the prospective nature of the reimbursement system in that expenditures by facilities are not built into the historical base until the following year. Mr. Moore, however, does not explain that the reverse is also true. That is, if a facility spends less in certain areas, the excess reimbursement is not taken away from the facility. By having a prospective system based on historical costs indexed for inflation, the Department allows the facility flexibility to decrease or increase specific costs within the budget. To increase that flexibility in the program cost category, the Department has also proposed an amendment to the rule removing any historical limits on the program cost category (See Comment 35).

Mr. Moore also points out that the rule is silent regarding the downsizing of facilities and "look behind audits." The "look behind audits" have been addressed by the proposed amendment (Comment 37) mentioned above. The Department has commented on the downsizing of facilities in Comment 44.

New administrative costs limits and cost of certified audits.
(See Comment 34)

Phase-in of common reporting year.

Overlap is unavoidable when phasing-in a new reporting year. The Department believes that the procedure outlined in Part 9553.0070 minimizes disruption.

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The 1985 costs will have to be reported based on the rule. However, changes in the chart of accounts need not be concurrently made, although it would be advisable for facilities to make those changes in the future. Therefore, the Department believes that the proposed phase-in provisions are necessary and reasonable and wishes to retain this provision as published.

Top Management Compensation (See Comments 4 and 6)

Backlog in ratesetting (See Comments 1 and 28)

Return on equity (See Comment 49)

Comment 54. Mr. James K. Richels, CPA, in his August 26th letter raises some concerns regarding the administrative cost limits. The amendments proposed by the Department in Comment 34 address Mr. Richel's concerns.

Comment 55. Mr. Sheldon R. Schneider, Executive Director with Bristol Place, Corp., indicates the difficulties that providers are having with insurance premium. The Department, in Comment 22, has proposed an amendment which would allow insurance premiums to be included in a special cost category together with real estate taxes, special assessments and licensing fee. These costs will be included in the rate as payable during the rate year. Therefore, providers will be fully protected against any increases in those costs.

Comment 56. Mr. James Voytilla with Ramsey County Community Human Services Department suggests that counties be allowed to recommend rate changes and that a short version of the rule be developed for small providers. The Department, in Comment 37, has proposed an amendment that would allow the one-time adjustment to be triggered by the biennial redetermination of need.

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Since counties are integral parties to that redetermination, the counties will have an opportunity for input. Other delegations of authority to counties for rate setting are not possible within current law. The Department does not believe that it has authority to develop different rules for different groups of community ICF/MR providers.

Comment 57. Steven Larson, Executive Director, Olmsted ARC Homes, Inc., raised several concerns in two letters dated August 21, 1985 and August 27, 1985. In the August 21 letter, Mr. Steven Larson suggests that the top management compensation should be left to the Board of Directors or the organization. The Department addressed top management in Comment 18.

Second, Mr. Larson states "the use of restricted funds should not be limited to the purchase or replacement of capital assets." The applicable provision is Part 9553.0060, Subpart 3, item C. The provision is clear that if the funds are restricted for the purpose of purchasing or replacing capital assets, they must be used for that purpose before the facility borrows money to purchase capital assets. It must be noted that the proposed rules do not restrict the funds, the funds are restricted by the board or by outside donors.

In the August 27th letter, Mr. Larson's concern with the misclassification of the administrators in the program cost category is addressed in the Department's Comment 34. Mr. Larson's concern with liability insurance increases of up to 40% was addressed by the Department Comment 22.

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Additionally, Mr. Larson is concerned with including the central office costs in the Administrative Cost Category and the limits proposed on that category. The Department addresses these concerns in Comment 34.

Lastly, Mr. Larson states that the proposed rule does not deal with the changing needs of residents. The Department addresses these concerns in Comments 35 and 37.

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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
444 LAFAYETTE ROAD
ST. PAUL, MINNESOTA 55101

September 17, 1985

Mr. Jon Lunde
Administrative Law Judge
Office of Administrative Hearings
400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, MN 55415

Dear Judge Lunde:

The Department of Human Services submits, for your consideration, the enclosed responses to comments on Parts 9553.0010 to 9553.0080, received by the Office of Administrative Hearings on September 12, 1985. Because the Department responded extensively to comments in the public hearing and to written comments submitted during the comment period, and further, because the Department has already submitted additional evidence bearing on the proposed rule, the Department at this time is responding only to newly presented arguments and related amendments, and to other matters it believes warrant expanded discussion.

In order to avoid confusion with DHS comments submitted after the 20-day comment period (Comments 1-57), these responses are numbered beginning with Comment 58.

Please advise me if you have questions concerning the Department's responses. My phone number is 296-5724.

Sincerely,

Maria Gomez, Director
Long Term Care Management

MRG:mab

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COMMENT 58. Mr. Emil Angelica, Executive Director of ARC Minnesota, suggested lowering the threshold for rate adjustment in a Class A to Class B conversion from 50 percent.

Response: The Department believes that in order to justify the considerable cost of converting a facility from Class A beds to Class B beds, it is necessary to insure that a substantial number of B beds are added to the system. In many cases, these conversions require extensive modifications to the physical plant of the facility.

Additionally, if the threshold were less than 50 percent, it would be very probable that a facility could be requesting interim rates for an extended number of years.

These conversions are going to be tied to the need determination process in M.S. 252.28 and Minnesota Rule Parts 9525.0015 to 9525.0145 [Emergency] and the availability of alternatives for the persons needing Class A beds that would be displaced. Therefore, the procedure does not depend on the normal turnover in facilities.

COMMENT 59. Mr. Luther A. Granquist, Attorney-at-Law, Legal Advocacy for Developmentally Disabled Persons in Minnesota, suggested an amendment to the proposed rule to allow the adjustment proposed at Part 9553.0050, subpart 3 more than once. Additionally, Mr. Granquist objects to triggering the adjustment only on the basis of a licensing deficiency. Finally, Mr. Granquist is concerned about the effect of these provisions on Welsh class clients.

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Response: The Department, in Comment 37, has proposed an amendment to subpart 3 which expands the triggering of an adjustment to any program staff deficiency found by State and Federal agencies and to any program staff need identified through the need redetermination process. Additionally, as stated by M. Gomez on page 80 of the August 22 transcript, the Department has amended Rule 186 (Parts 9510.0120 to 9510.1140) to allow the special needs rate to cover a period of three years. The Department believes that the proposed rule as amended, in conjunction with amended Rule 186, effectively addresses Mr. Granquist's concerns. However, the Department agrees with Mr. Granquist that, in some instances, it may be necessary to adjust the rate of a facility more than once and, therefore, proposes the following amendment:

On page 45, line 26, after the word "once", insert "in a three year period".

The Department believes that this amendment is necessary and reasonable in order to provide sufficient mechanisms to address the changing needs of mentally retarded residents within a facility.

COMMENT 60. Mr. William Hargis, President, Minnesota Association of Health Care Facilities made several comments regarding different provisions of the proposed rule.

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Response:

Part 9553.0050, subpart 2, item E.

Mr. Hargis suggested amendments to this subpart to allow the efficiency incentive to be included in the computation of the efficiency incentive in future years. The Department, in Comment 35, has proposed an amendment which allows program costs to increase independently of whether savings are achieved in the maintenance and administrative cost categories. This amendment will allow the facility more flexibility in the use of the efficiency incentive which, in the Department's opinion, is the intent of Mr. Hargis' proposal. The Department wishes to retain this provision as amended in Comment 35.

Part 9553.0020, subpart 6.

Mr. Hargis recommended a change in the definition of capital debt to include loan costs and bond costs. The Department believes that the proposed rule must be clarified and proposes the following amendment:

On page 1, line 35, after the word "asset", insert "including points, financing charges, and bond premiums or discounts".

On page 53, line 21, after the word "asset", insert "including points, financing charges, and bond premiums or discounts".

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Part 9553.0060, subpart 7.

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Mr. Hargis pointed out that, "it is important for the Department to consider leases which are to the benefit of the Department and the provider". The Department agrees with Mr. Hargis and has proposed an amendment to Part 9553.0060, subpart 7, in Comment 42.

Part 9553.0041, subpart 10, item B, subitem (2).

Mr. Hargis pointed out that the April 1 date is inconsistent with subpart 8, item A. The Department concurs, and, in light of Comment 29, proposes the following amendment:

On page 35, line 33, strike "March 31 if no extension has "; insert "April 30;"; on line 34, strike "been granted; on April 1 if the extension was granted;".

Part 9553.0040, subpart 5, item C.

The commentor suggested the proposed rule should define "special assessments paid "and" accrued real estate taxes". In Comment 22, the Department addressed this concern by providing for the submittal of the facility's real estate invoice for the calendar year in which the rate year begins. The Department believes the proposed amendment appropriately addresses Mr. Hargis' concern.

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Part 9553.0036, item O.

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Mr. Hargis believes the proposed rule may be inconsistent in the treatment of bad debts. The Department agrees and proposes the following amendment:

On page 1, line 23, strike "recovered bad debts,".

The Department believes that the proposed amendment is the appropriate means of dealing with bad debts in this industry for the reasons stated on page 33 of the Department's SNR.

Part 9553.0036, item W.

He also suggests that disallowing a uniform allowance paid to employees which are not a governmental requirement is an unreasonable disallowance. The Department disagrees. Programmatically, the intent of community facilities for persons with mental retardation is to create a more "home-like" atmosphere. Uniforms, except where required by governmental regulation, are not conducive to creating a "home-like" atmosphere.

COMMENT 61. Ms. Kathleen Pine, Executive Director, Dakota's Children, Inc., made comments which the Department wishes to address.

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